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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/519,809

Filing Date: December 30, 2004

Appellant(s): MISKOVIC ET AL.

D. Scott Moore
For Appellant

EXAMINER'S ANSWER

MAILED

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GROUP 2800

This is in response to the appeal brief filed October 23, 2006 appealing from the Office action mailed June 7, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,903,254

Mundt

1999

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-5 and 7-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Mundt (US 5,903,254).

With respect to claim 1, Mundt discloses a battery-driven electronic device, comprising:

means for detecting power consumption that is configured to establish present power consumption during operation of the device (col 8 ln 9-20, Fig. 5A-D, and col 6 ln 56-61);

means for presenting data based on the established current power consumption (Fig. 5A-D and col 7 ln 25-31);

means for calculating a level indicating parameter value representing the established current power consumption as a consumption level in a predetermined scale (col 8 ln 9-20 and Fig. 5A-D); and

wherein said presented data comprises an indication of said consumption level in said scale (col 7 ln 25-60).

With respect to claim 2, Mundt discloses the battery-driven device as recited in claim 1, wherein said presented data comprises said level indicating parameter value and a preset value of said scale (col 7 ln 25-60, Fig. 5A-D, and col 7 ln 1-25).

With respect to claim 3, Mundt discloses the battery-driven device as recited in claim 1, further comprising:

means for calculating remaining battery time based on the established current power consumption (col 6 ln 28-55 and Fig. 4).

With respect to claim 4, Mundt discloses the battery-driven device as recited in claim 3, wherein said presented data comprises an indication of the calculated remaining battery time based on a current mode of the device (col 6 ln 28-55, Fig. 4, and col 8 ln 9-20).

With respect to claim 5, Mundt discloses the battery-driven device as recited in claim 1, wherein said means for presenting data comprises a display (Fig. 4 and 5A-D and I in Fig. 1).

With respect to claim 7, Mundt discloses a computer program product for a battery-driven device comprising:

a computer readable storage medium having computer readable program code embodied therein (col 6 ln 65-67, col 8 ln 9-10, and col 2 ln 24-32), the computer readable program code comprising:

computer readable program code configured to detect present power consumption during operation of the device (col 8 ln 9-20, Fig. 5A-D, and col 6 ln 56-61);

computer readable program code configured to calculate a level indicating parameter value representing the detected present power consumption as a consumption level in a predetermined scale (col 8 ln 9-20 and Fig. 5A-D); and computer readable program code configured to present an indication of said consumption level in said scale (Fig. 5A-D, col 7 ln 25-60, and col 8 ln 9-10).

Additionally, regarding claims 7-12, the software recited by Mundt (col 8 ln 9-10) contains a means for carrying out the actions mentioned above, including the computer readable program code, because computer software consists of program code.

With respect to claim 8, Mundt discloses the computer program product as recited in claim 7, further comprising:

computer readable program code configured to present said level indicating parameter value and a predetermined end value of said scale (col 7 ln 25-60, Fig. 5A-D, and col 7 ln 1-25).

With respect to claim 9, Mundt discloses the computer program product as recited in claim 7, further comprising:

computer readable program code configured to calculate remaining battery time based on the detected present power consumption (col 6 ln 28-55 and Fig. 4).

With respect to claim 10, Mundt discloses the computer program product as recited in claim 9, further comprising:

computer readable program code configured to present an indication of the calculated remaining battery time based on a current mode of the device (col 6 ln 28-55, Fig. 4, and col 8 ln 9-20).

With respect to claim 11, Mundt discloses the computer program product as recited in claim 7, wherein said computer readable program code configured to present comprises computer readable program code configured to present said indication of said consumption level in said scale on a display (col 8 ln 9-20, Fig. 4 and 5A-D, and I in Fig. 1).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 6 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mundt (US 5,903,254).

With respect to claims 6 and 12, Mundt discloses the battery-driven device and computer program product as recited in claims 1 and 7, where said device is a battery powered notebook computer with a modem (col 6 ln 58-67).

Although Mundt does not expressly disclose wherein said device is a radio communication terminal, he does disclose the use of a modem with the notebook computer. At the time of the invention, one skilled in the art knew that a wireless modem could be applied to the device of Mundt, in order to remove the constrictions of wires and to allow a wider area of use for the computer. Furthermore, the applicant recites that radio communication devices include portable laptop computers (pg 5 ln 4-9).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to include a wireless modem in the device of Mundt, as was well known in the art, in order to allow a wider area of use for the device.

(10) Response to Argument

Independent Claims 1 and 7 are Not Patentable

Appellants argue that Mundt does not appear to contain any disclosure of determining the present or current power consumption in a battery-driven electronic device and presenting the power consumption as a consumption level in a predetermined scale. Appellants further argue that the icons of Figs. 5A-5D and the icons of Fig. 4 of Mundt that display the remaining battery energy and remaining time until depletion do not determine the present or current power consumption and present the power consumption as a consumption level in a predetermined scale. Overall, appellants submit that Mundt does not disclose or suggest the recitations of independent claims 1 and 7 directed to establishing the current or present power consumption, presenting data based on the current power consumption, and calculating a level indicating parameter value that represents the current power consumption on a predetermined scale.

Examiner respectfully disagrees for the following reasons: Mundt does determine/establish the present power consumption and presents the data as a consumption level in a predetermined scale as noted above in the rejections of claims 1 and 7. It is reasonable to interpret the faucet in Figs. 5A-D as showing the present power consumption because it is still displaying detection/determination of the power consumption, even if that consumption level is initially activated by the user (col 8 ln 13-23 and col 6 ln 56-61). Furthermore, the predetermined scale can be seen in the four different figures (5A-D) wherein each one is

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showing the power consumption at a different rate (i.e. each different flow rate represents a different level on the predetermined scale and the computer operating at a different power consumption). Please also see the response below.

Additionally, appellants argue that the faucet icons of Figs. 5A-5D of Mundt do not vary in response to the particular application being run on the notebook computer N, but instead are merely operation mode dependent.

Examiner respectfully disagrees for the following reasons: The operation modes of Mundt do control the flow rate being displayed and the devices/applications run on the computer (col 6 ln 60 to col 7 ln 6), and that meets the claim language presented by the applicant. To elaborate, under different operation modes, certain portions of the computer are altered (i.e. slowing down the clock rate of the microprocessor or shutting off certain peripheral devices such as the hard disk drive or modem) which affects the present power consumption (col 6 ln 58 to col 7 ln 45). The fact that this can be set by the user does not mean that present power consumption is not determined or presented as a consumption level in a predetermined scale. Both the appellants' application and the Mundt reference represent this data in a digital scale, as seen by the appellants' Fig. 3 (specifically no. 22 and 23) and the reference Mundt's Fig. 5A-5D and Fig. 4 (specifically the water flow from the faucet in Fig. 5A-5D). The difference is that the appellants have a larger number of values in that scale (as noted by appellants' no. 22 and 23 in Fig. 3), wherein the bar graph of the power consumption will move to different levels when different amounts of power are being consumed. That is, it appears to be more detailed because it seems that there would be more than the three or four main values presented by Mundt (i.e. Fig. 5A-5D). However, that does not provide patentable distinction over the prior art provided.

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Also, it should be noted that the appellant did not seem to address or provide focus on the examiner's rejection using Fig. 4, wherein Fig. 4 was cited in the rejection of claim 3 (which is dependent on claim 1), other than mentioning that, in their opinion, the icons of Fig. 4 display the remaining battery energy and remaining time until depletion but do not determine the present or current power consumption or present it in a predetermined scale. As noted by Mundt in col 6 ln 28-55, no. 62 in Fig. 4 represents the estimated time remaining until the battery is depleted, which is based on the remaining energy in the battery and the current rate of consumption as determined by the notebook computer, emphasis added (col 6 ln 48-55). The time remaining is directly affected by the present power consumption of the device, and therefore, can be reasonably interpreted as displaying the present power consumption in a predetermined scale.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Aaron Piggush

Examiner AU 2838

Conferees:


Karl Easthom

SPE AU 2838

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Darren Schuberg

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